

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>RUSSEL “JOEY” JENNINGS,</b>	:	<b>Civil No. 3:20-CV-148</b>
<i>by and through his parents/guardians,</i>	:	
<i>Richard and Susan Jennings, et al.,</i>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	<b>(Magistrate Judge Carlson)</b>
	:	
<b>TOM WOLF, et al.,</b>	:	
	:	
<b>Defendants.</b>	:	

**MEMORANDUM ORDER**

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

This case, a class action lawsuit brought against the former Governor of Pennsylvania and a number of state health officials, involves claims under the Americans with Disabilities Act (“ADA”) regarding the continued placement of profoundly intellectually disabled persons in state-operated Intermediate Care Facilities (“ICFs”). The named plaintiffs and class members are intellectually disabled individuals who currently reside in two state-operated ICFs, White Haven Center and Polk Center. In 2019, the state made a decision to close these two ICFs and transfer the remaining residents to either a community placement, a privately-

operated ICF, or one of the two remaining state-operated ICFs—Selinsgrove and Ebensburg.

On November 2, 2022 we granted the plaintiffs' motion to certify this lawsuit as a class action but denied the plaintiffs' motions for injunctive relief. (Docs. 160, 161). See Jennings by & through Jennings v. Wolf, No. 3:20-CV-148, 2022 WL 16635644, at \*1 (M.D. Pa. Nov. 2, 2022). Thereafter, the plaintiffs filed a second motion for temporary restraining order and preliminary injunction. (Doc. 171). While we understand and are sympathetic to the plaintiffs' concerns voiced in this motion, we were constrained to deny the motion. (Doc. 181). However, given the rapidly shifting legal and factual landscape in this case, we instructed plaintiffs' counsel to notify us on or before **February 3, 2023** regarding whether any of the named plaintiffs now wish to withdraw from this litigation. In addition, we instructed plaintiffs' counsel to prepare and distribute to putative class members notices which comply with the requirements of Rule 23(c)(2), along with forms requiring putative class members to affirmatively notify the court that they wish to opt-in to this lawsuit. The deadline for the return of these opt-in forms was **February 17, 2023**. (Id.)

We have now received a communication from counsel indicating that all of the named plaintiffs except for Russell "Joey" Jennings represented by his parents/guardians Richard and Susan Jennings and Janine Winsock represented by

his sister/guardian Ann Meszczynski wish to withdraw from this lawsuit. It is also represented that the class now consists of no more than 34 individuals, raising questions concerning whether Rule 23's numerosity requirements are still met here.

In light of these developments IT IS ORDERED as follows:

1. The clerk shall terminate all named plaintiffs except for Russell "Joey" Jennings represented by his parents/guardians Richard and Susan Jennings and Janine Winsock represented by his sister/guardian Ann Meszczynski.
2. The trial on this case is POSTPONED as we attempt to ascertain whether this litigation presents a viable class action. In this regard, the defendants shall file a motion to de-certify the class, if they deem this course to be appropriate, on or before **February 17, 2023**. Briefing will be deferred pending completion of the steps outlined in paragraph 3 below.
3. Because we deem proper notice to class members to still be necessary for the preservation of individual rights and interests, and in order to ensure that any motion to de-certify the class is based upon a fully developed factual record, the parties shall jointly prepare and distribute to putative class members notices which comply with the requirements of Rule 23(c)(2), along with forms requiring putative class members to affirmatively notify the court that they wish to opt-in to this lawsuit. Those putative class members who wish to join the litigation should return the opt-in forms for

filing with the court **no later than March 6, 2023**. Only plaintiffs who complete the opt-in forms will be considered members of this class action.

/s/ Martin C. Carlson

Martin C. Carlson

United States Magistrate Judge

DATED: February 6, 2023